



**STATE OF NEW JERSEY**

In the Matter of A.B.,  
Police Officer (S9999R), Passaic City

CSC Docket No. 2018-2724

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

Medical Review Panel Appeal

**ISSUED:** March 29, 2019 (BS)

A.B., represented by Michael L. Prigoff, Esq., appeals his rejection as a Police Officer candidate by the Passaic City Police Department and its request to remove his name from the eligible list for Police Officer (S9999R), Passaic City on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on December 14, 2018, which rendered its report and recommendation on December 23, 2018. Exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Krista Dettle (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as presenting with “significant problems including poor judgment and poor dutifulness.” Dr. Dettle cited terminations from jobs in 2016 and 2017, as suspensions and write-ups. Dr. Dettle further noted that the appellant was detained for a possible DUI in March 2017 and had been arrested while in high school on a graffiti charge. Dr. Dettle concluded that the appellant was not psychologically suitable for employment as a Police Officer.

Dr. Chester Sigafoos (evaluator on behalf of the appellant) carried out a psychological evaluation and noted the defensive nature of the appellant’s psychological testing. However, Dr. Sigafoos did not find the psychological testing to be indicative of substantial problems with the appellant’s functioning. Likewise, Dr. Sigafoos did not view the appellant’s work history as rising to the level of

disqualification, nor did he have particular concerns about substance abuse. As a result, Dr. Sigafos concluded that the appellant was psychologically suited for the subject position.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The Panel found that the appellant's consistent work history dating to January 2017 to be indicative of reasonable work performance. The Panel noted as a positive factor that one of the employers that the appellant had been suspended from continued to call him back for work on an occasional basis. The Panel was concerned about the incident in which the appellant had driven a motor vehicle after consuming alcohol. Even though the appellant initially failed the field sobriety test, upon testing, his blood alcohol content was well below the legal level and he was not charged. The Panel did not see the graffiti incident while in high school as rising to the level of a pattern of behavior that would indicate a lack of psychological fitness. Further, the Panel concluded that the testing data did not reveal results indicative of any psychological problems consistent with a lack of fitness for the subject position. The Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. The Panel recommended that the applicant be reinstated to the eligible list.

In its exceptions, the appointing authority, represented by Eric M. Bernstein, Esq., asserts that the appellant, as diagnosed by Dr. Dettle, has a psychological condition which manifests itself in poor judgment and poor dutifulness, traits which could put co-workers and the public in harm's way. The appointing authority relies on *In the Matter of Vey*, 124 N.J. 534 (1994) and argues that Dr. Dettle has shown by "professionally acceptable methods that the selection device is predictive of or correlated with the work element identified." The appointing authority cites the appellant's failure to disclose a graffiti incident in high school and his failure to be offered a position of Correctional Police Officer for this failure to disclose as illustrative of poor judgment and poor dutifulness. The appointing authority contends that candidates for positions in law enforcement are held to a higher standard of personal accountability and, accordingly, the appellant's failure to be truthful and lying on an application for the Department of Corrections should be grounds to uphold his removal. Additionally, the appointing authority takes exception to the Panel's finding that the appellant maintained a consistent employment history, Dr. Dettle's report to the contrary, instead relying on the appellant's self-reported, unsubstantiated and uncorroborated statement that he got called back to work occasionally for a company which had previously suspended him. The appointing authority respectfully requests that the Commission disregard the findings of the Panel and uphold the removal of the appellant from the subject eligible list.

## CONCLUSION

The Civil Service Commission has reviewed the report and recommendation of the Medical Review Panel. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators and that, in addition to the Panel's own review of the results of the tests administered to the appellant, it also assesses the appellant's presentation before it prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. In the instant matter, the Commission finds the exceptions presented by the appointing authority not to be persuasive. In this regard, the Commission notes that its Panel of qualified and licensed Psychologists and Psychiatrist have already reviewed all of the raw test data, reports and opinions of Drs. Dettle and Sigafos, as well as having the opportunity to question the appellant, and rendered its own expert opinion in this matter. The Commission defers to and agrees with the expert opinion of its Panel. The Commission notes that the graffiti incident and the appellant's employment history were known to the appointing authority prior to its conditional offer of employment being issued. Had the appointing authority been concerned with the appellant's employment history or high school graffiti incident, this would have been the time to seek the appellant's removal. Now the appellant has successfully gone through the appeal process. At this juncture, the Commission is mindful that the appellant's suitability will be further assessed during his working test period by the appointing authority and will ultimately demonstrate whether he has the actual ability to successfully perform the duties of a Police Officer.

## ORDER

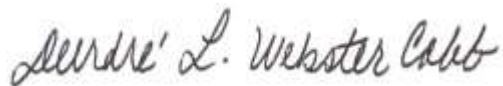
The Civil Service Commission finds that the appointing authority has not met its burden of proof that A.B. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue ascertained through an updated background check conducted after a conditional offer of appointment, the appellant's appointment is otherwise mandated. A federal law, the Americans With Disabilities Act (ADA), 42 U.S.C.A. §12112(d)(3), expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. *See also* the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examination* (October 10, 1995). That offer having been made, it is clear that, absent the erroneous disqualification, the aggrieved individual would have been employed in the position.

Since the appointing authority has not supported its burden of proof, upon the successful completion of his working test period, the Commission orders that

appellant be granted a retroactive date of appointment to January 25, 2018, the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay or counsel fees, except the relief enumerated above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 27TH DAY OF MARCH, 2019




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Deirdre L. Webster Cobb  
Chairperson, Civil Service Commission

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#### Attachments

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